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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/757,138 | 01/09/2001 | Chad C. Smutney | P-1656 | 6406 |

20978 7590 10/03/2002

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EXAMINER

GHAFOORIAN, ROZ

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3763

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/757,138

Applicant(s)

SMUTNEY ET AL.

Examiner

Roz Ghafoorian

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 15-17 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-9, ~~11-12~~ and 15-~~16~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S Patent No.6391007 to Change et al

Change teaches a needle component comprising a housing 501 a needle cannula 502 mounted in the housing the needle cannula having a sharp tip where in the housing defines a fluid chamber 513 and an access port 509 for fluid flow there through; and a blunted component comprising a shuttle member 515 and a blunted probe 504 mounted on the shuttle member 515, the blunted probe having a blunt tip. The blunted probe is disposed within the needle cannula and the needle component and the blunted component are configuration for movement from a sharpened configuration to in a blunted configuration. The shuttle defines a non-perforating cavity within which the blunted probe is mounted. The shuttle member is perforated. Change however, teaches a locking sharpened configuration and an unlocked blunt configuration, the opposite of what the applicant has claimed.

In re Gazda, 219 F.2d 449, 452, 104 USPQ 400, 402 (CCPA 1955) At the time the invention was made, it would have been an obvious matter of design choice to a

person of ordinary skill in the art to have reversed the locked sharper and unlocked blunt configuration because the applicant has not disclose that the locked blunt and unlocked sharpened positions provide an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore would have expected Applicant's invention to perform equally well with the locking sharpened and unlocking blunt configuration because both of the devices perform the same function as well as are made for the same purpose.

2. Claims 10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6391007 to Change et al, and further in view of U.S Patent No. 6056726 to Isaacson.

As mentioned above Change teaches a needle component comprising a housing 501 a needle cannula 502 mounted in the housing the needle cannula having a sharp tip where in the housing defines a fluid chamber 513 and an access port 509 for fluid flow there through; and a blunted component comprising a shuttle member 515 and a blunted probe 504 mounted on the shuttle member 515, the blunted probe having a blunt tip. The blunted probe is disposed within the needle cannula and the needle component and the blunted component are configuration for movement from a sharpened configuration to in a blunted configuration. The shuttle defines a non-perforating cavity within which the blunted probe is mounted. The shuttle member is perforated. Change however, teaches a locking sharpened configuration and an unlocked blunt configuration, the opposite of what the applicant has claimed.

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Change however, does not teach a flash chamber. Isaacson teaches a self-contained safety intravenous catheter insertion device with a flash chamber.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined these studies, because according to Isaacson portion within the rearward needle portion to permit the user to visualize blood entry into the needle and verify proper placement of the needle within a blood vessel.

(Col.6, lines 25-30)

Response to Arguments

3. Applicant's arguments with respect to claims 1, 3, 9 and 16 have been considered but are moot in view of the new ground(s) of rejection.

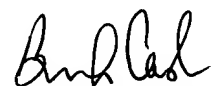
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

RG
September 24, 2002




BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700